

REMARKS

Claims 1-25 are present in this case. Consideration of the application in view of the following remarks is respectfully requested.

In the office action mailed December 19, 2000, the Examiner required restriction of prosecution to one of the following inventions: Group I including claims 1-6 and 16-20, Group II including claims 7-15, and Group III including claims 21-25. Applicant hereby traverses the Examiner's requirement and elects the inventions of Groups I and II including claims 1-6, 7-15, and 16-20, drawn to an apparatus for in-ground fluid evaluation, a system for sampling in a hole in the ground, and a method of obtaining information about fluids from an in-ground hole respectively.

In order for a restriction requirement to be proper, the Examiner must establish that (1) the inventions are distinct as claimed and (2) there must be a serious burden on the Examiner. MPEP 803. Applicants respectfully submit that the Examiner has not established a prima facie case of serious burden in accordance with the requirements of MPEP 808.02.

Firstly, the Examiner has not shown that the allegedly distinct subject matter claimed in Groups I and II has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. In point of fact, the Examiner notes that each of Group I and II are classified in class 73, albeit in different subclasses. In this regard, Applicants point out that contrary to the Examiner's assertion, subclass 864.51 relates to containers which are either integral with a capture element or which act in themselves as a capture element and not to "apparatus for sampling in a hole in the ground."

Secondly, the Examiner has not shown that the subject matter claimed in Groups I and II have acquired a separate status in the art when they are classified together. The Examiner has not cited any patents which are evidence of such

separate status nor shown a separate field of search. Applicants respectfully submit that the Examiner has not shown that it is necessary to search for one of the distinct subject in places where no pertinent art to the other subject exists. As noted above, subclass 864.51 relates to containers which are either integral with a capture element or which act in themselves as a capture element. Subclass 152.23 relates to means for obtaining a predetermined portion of the fluid to be tested.

Applicants respectfully submit that the classification is the same and the field of search for Groups I and II is the same and there is not clear Indication of separate future classification and field of search. Therefore, no reasons exist for dividing among Groups I and II.

Respectfully submitted,
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